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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Lester Ludwig et al.	Confirmation No.: 6010
Serial No.: 10/721,385	Art Unit: 2153
Filed: November 26, 2003	Examiner: Dinh, Dung C.
Title: *SYSTEM FOR REAL-TIME COMMUNICATION BETWEEN PLURAL USERS*	Attorney Docket No.: A8682

DECLARATION UNDER 37 C.F.R. 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Lester F. Ludwig, declare as follows:

1. I am an employee at Collaboration Properties, Inc., the assignee of the above-identified application, and the first named inventor of the invention that is the subject of this application. I make this Declaration on behalf of Collaboration Properties, Inc. on the basis of my knowledge of the development of the invention that is the subject of this application.

2. It is my understanding that claims 1-4, 8-15, 17, 19-21, 23-24, and 26-36 of the above-identified application have been rejected under 35 U.S.C. 103(a) in an Office Action dated February 9, 2006 as being unpatentable over Michael Banks "America Online: A Graphics Based Success Evaluation", and further in view of Baumgartner et al. US patent 5,195,086, and Marshak "Beyond Mail for Windows" and Kamerman et al. US patent 5,519,834, and Vin et al. "Multimedia Conferencing in the Etherphone Environment".

3. Annexed hereto as Exhibit A is a photocopy of pages 5-6 and 70-72 of a book entitled "The Official America Online Tour Guide" cited in the response to the Office Action. Selected sections from these pages clearly demonstrate that Banks does not teach a service record including a user's log-in location or the use of service records to establish communications. This book (Version 2) was authored by Tom Lichty and published by Ventana Press in 1992.

4. Annexed hereto as Exhibit B is a copy of pages 10 and 22 of Peter Salin's Master's thesis, also cited in the response. Selected sections from these two pages clearly demonstrate that (i) the allegedly obvious combination of the Banks and Baumgartner technologies occurred for the first time at least two years after the effective filing date of this application and (ii) the alleged combination of the Banks and Kamerman technologies is not a trivial task and therefore not obvious at all. The full Master's Thesis entitled "Mobile Instant Messaging Systems – A Comparative Study and Implementation", which was published on September 21, 2004, is available on the Internet at www.tml.tkk.fi/Publications/Thesis/Salin-IMPS.pdf.

5. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true, and that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, and any patent issuing thereon, or any patent to which this declaration is directed.

Date: 04/14/06

Lester F. Ludwig

Exhibit A

Pages 5-6 and 70-72 of the Book entitled "The Official America Online Tour Guide"

Which is precisely what telecommunications services—and America Online—are: a vast network of "members," each of whom uses a computer, a modem and a telephone line to connect with a common destination—to go "online." Public and private files can be exchanged, electronic mail can be sent and received, and members who are online at the same time can "chat" in real time—they can even play online games with one another.

And what does all this cost? The economies of scale allow expenses to be distributed among the members. The only cost is a small monthly membership fee, typically less than $10, and a nominal hourly connect charge. Moreover, even though America Online (AOL) is in Washington, DC, few members pay for long-distance calls. AOL has local telephone numbers in nearly every city in the contiguous United States. Even if you live in the sticks, chances are there's a local number you can call, or one that's a "short" long-distance call away.

It's one big Thunder-Lizard computer

Another way of defining America Online is by describing its hardware. Simultaneously coordinating thousands of phone calls and storing tens of thousands of files require one Thunder-Lizard of a computer. No little Stegosaurus will do. We're talking T-Rex here, a beastie who relocates continents whenever he gets the urge to scratch an itch. Forget prefixes like kilo and mega. Think giga and googol. When they turn on the power to this thing, lights dim along the entire Eastern seaboard.

The Stratus

I hate to disappoint you, but miniaturization has dwarfed America Online just as it has dwarfed Newton, Apple's hand-held personal digital assistant. AOL's computer is more of a field mouse than a Thunder Lizard. It's not a single computer either: when I was last there, AOL was using nine computers, each about the size of Jay Leno on a motorcycle. These computers (see Figure 1-2), manufactured by the Stratus Corporation in Marlboro, MA, are collectively and affectionately (if one ever feels affection for nine Jay Leno-sized computers) referred to as "The Stratus" by those who are Way Cool around AOL.

More than anything else, the Stratus is remarkable for its reliability. Everything—memory, disk storage, even processors—is redundant. All data are stored twice. If the primary unit hiccups, the secondary unit covers. Diesel generators are on perpetual standby in case there's a

power failure. AOL even has a contract with diesel-oil suppliers to keep its tanks filled. (I'm not making this up, honest.) The banking industry uses Stratus computers for the same reason America Online does: these things simply don't fail.

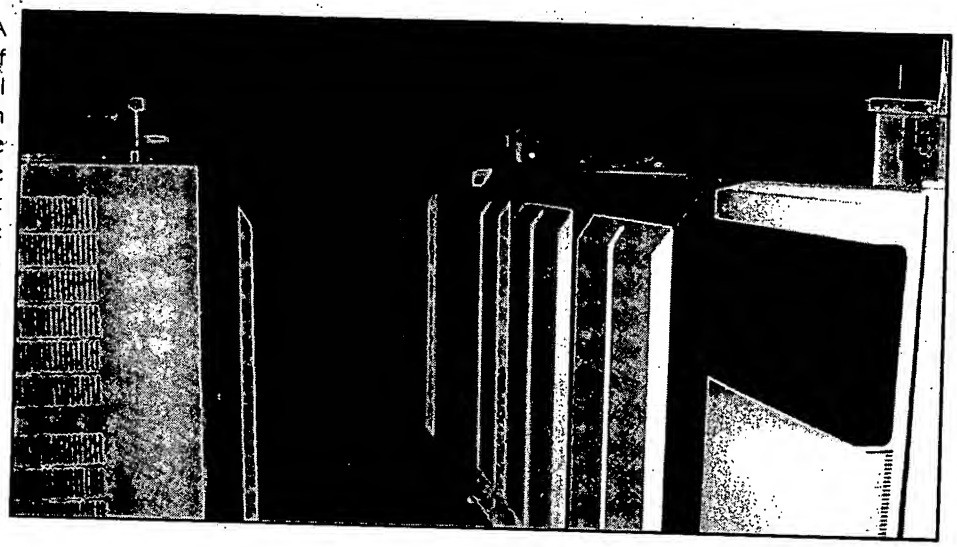

Figure 1-2: A number of individual computers team up to form "The Stratus," the mechanical heart of AOL. Those are 3 1/2" disk boxes atop the unit in the foreground.

SprintNet

If you wanted to send a package to a friend across the country, you could, I suppose, hop in your car and drive it there yourself. Compared to the alternatives, it would be a perilous journey and it would cost a fortune.

More likely, you'd hire a *common carrier*—a service like United Parcel Service or Federal Express—to deliver the package for you. For a fraction of what it would cost to do the job yourself, common carriers can do it more reliably, less expensively and more conveniently.

For much the same reason, America Online hires common carriers to deliver goods to its members. SprintNet—a service of US Sprint—is the common carrier that AOL uses in the United States. Datapac—a subsidiary of Bell Canada—serves Canadian members. These common carriers offer "nodes," local telephone numbers, in most cities in North America. They charge AOL for phone calls (placed or received) just as Federal Express charges you to deliver a package.

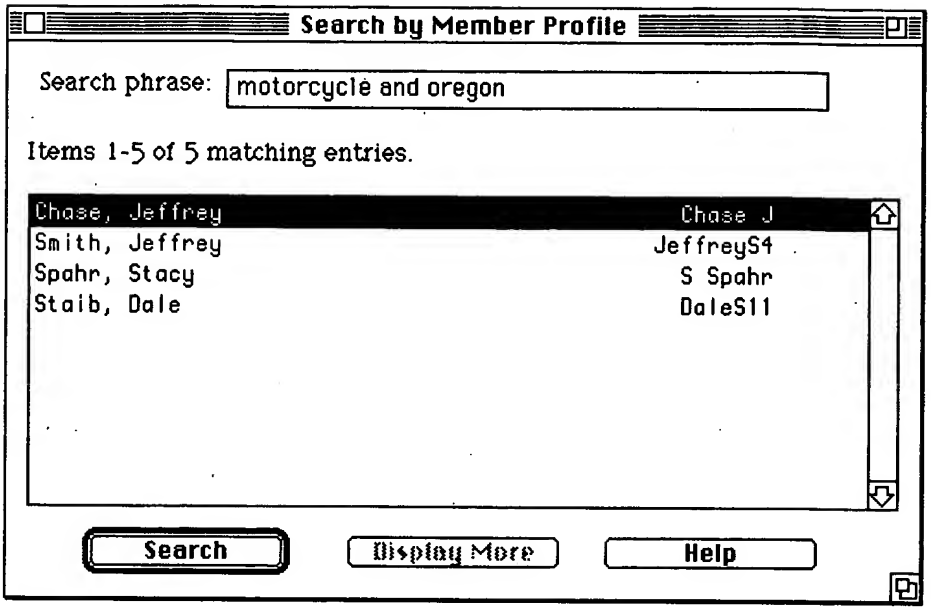

Figure 3-14: Much to my delight, five other Oregonians share my interests in motorcycling and AOL.

As it turns out, four of those people listed in Figure 3-14 live within 20 miles of my home. I'll have to send them some mail and see if they want to explore the forest.

Member profiles

As I mentioned a moment ago, member profiles are voluntary. If you elect not to complete a profile, your name won't show up in searches like the one described above. Look again at Figure 3-11. Since I was quoting him (and since I was referring to CJR3 as "him," not knowing which gender), I tried to get the profile for CJR3. No luck. CJR3 elected to remain un-profiled.

You may do the same, of course; but you cut yourself out of a number of opportunities to become involved in the online community. If you elect to post a profile (or if you want to edit the profile that is already on file for you), America Online provides a couple of ways for you to do so.

Figure 3-15 may access member prof either usi keyword: P or by followi path a

Look again at Figure 3-13. Note that one of the options listed there is Edit Your Online Profile. While this is one way to get the job done, a better way is to go through Members' Online Support. You've got to be signed on in either case, but Members' Online Support is free and the Members menu is not. Moreover, the Members' Online Support route offers a few options which aren't available from the Members menu. You may also use the keyword: Profile. Both routes pass through the free curtain.

Once you choose either one of these methods, you'll see the window pictured in Figure 3-4. Note the icon labeled Account & Billing Options. Click on it and follow the path identified in Figure 3-15.

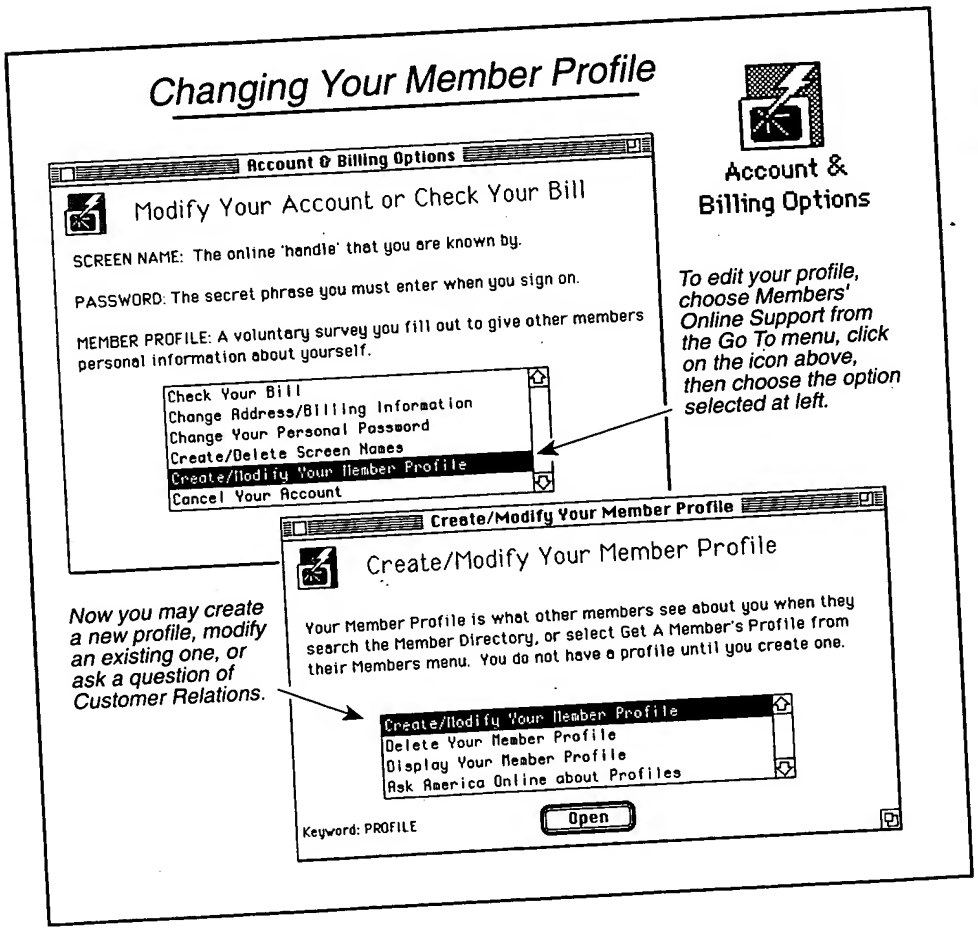

Figure 3-15: You may access your member profile by either using the keyword: Profile, or by following the path above.

The profile inquiry consists of four screens, each with a few questions. Take your time answering these (it's free, after all), and soon you'll have a profile as sterling and poetic as mine (see Figure 3-16).

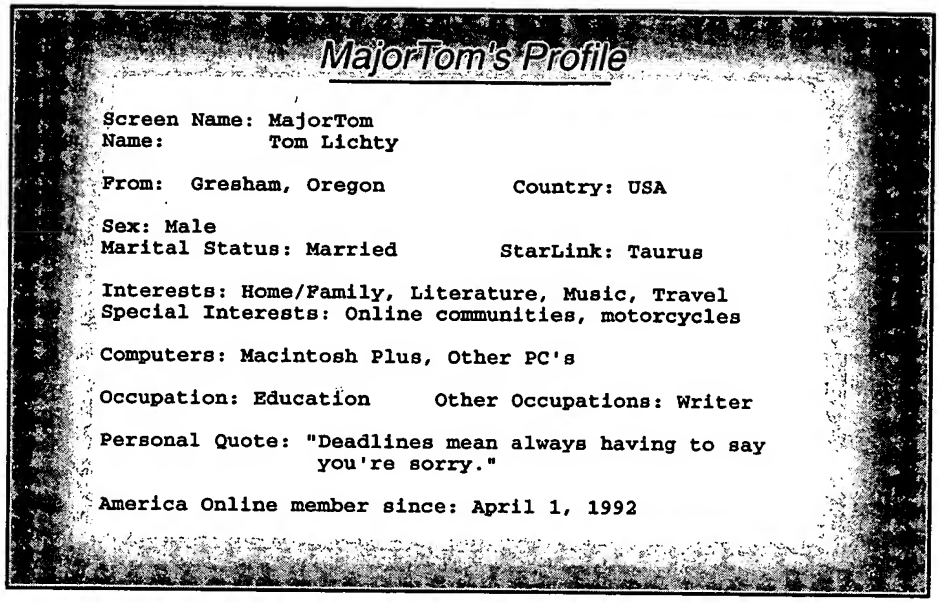

Figure 3-16: MajorTom's profile reveals all of my secrets.

Moving on

We've come a long way since the heavy-metal band took the stage at the beginning of this chapter. I hope our journey has been confidence-building. America Online offers more help—and more *kinds* of help—than any software I've known. It's online, it's off-line, it's Jay Levitt and the Customer Relations Department, it's Members Helping Members and it's Guides. Everyone at AOL—members included—helps someone else sooner or later. That's comforting. Not only is AOL a community, it's a *considerate* community, where no one remains a stranger for long.

Now that you're all connected and brimming with confidence, the time has come to visit a department. The one that most people visit first is the Entertainment Department, where sports, comedy, music, TV and the movies reign supreme. I doubt we'll see Online Help & the Members again; but rumor has it the Grateful Dead will make an appearance in the next chapter. Read on.

Exhibit B

Pages 10 and 22 of Peter Salin's Master's Thesis

Table 2.2: The influence of messaging systems on productivity

Messaging System	Caller	Callee
Voice call	Generally no decrease in productivity. If the callee is reached, a direct answer can be received.	Often decreases productivity as the interrupted callee must drop its current work in order to answer the call.
Email	Decrease in productivity while waiting for a reply.	Affects productivity only slightly since the callee can choose when to answer the email.
Instant Messaging	Typically no productivity reduction. The presence service allows the caller to select currently available callee.	Reduces productivity upon message reception, but the callee can use the presence service to control the arrival of messages.

a niche for instant messaging as it is more suitable for particular tasks than the current systems. However, instant messaging will not eliminate any of the current systems. Users will choose which system to use based on the type of communication. Instant messaging is suitable for quick real-time conversations, email is convenient for errands that do not require an immediate response and voice calls are often preferred for e.g. business negotiations as the risk of misunderstandings is reduced.

2.4 Proprietary Instant Messaging Systems

The instant messaging market is currently dominated by three big companies, AOL, Yahoo and Microsoft. These companies all offer their own proprietary solutions based on private protocols that are not interoperable. From the viewpoint of instant messaging, there are no fundamental differences between the solutions. Instead, the solutions try to attract users by incorporating non-instant messaging features such as weather reports or online games. The rest of this section describes these instant messaging systems in brief.

2.4.1 ICQ

ICQ (short for I Seek You), created in 1996 by a small Israeli start-up company called Mirabilis, is considered the ancestor of instant messaging systems. ICQ introduced concepts like buddy lists, presence subscriptions and block lists, which form the basis for every instant messaging system of today. Internet growth was exponential at the time and ICQ quickly gathered a large user base. When Mirabilis was bought for $287 by AOL in 1998, ICQ had already gathered 12 million users. Currently ICQ has 180 million registered users, of which approximately 68 millions are active users. The majority of the user base is located in Asia and Europe, while the amount of users in the U.S. is relatively small.

Table 2.3 presents the amount of active users per instant messaging system. The numbers are based on a research performed by the Radicati Group in October 2003.

handled through SMS messages. Later, mobile email was made available through WAP (Wireless Application Protocol) and recently mobile devices with email clients managing email using well-known mail protocols such as IMAP (Internet Message Access Protocol) or POP (Post Office Protocol) on top of GPRS (General Packet Radio Service) have been made available.

Instant messaging solutions for mobile devices have been available since 2002, when AOL and Yahoo started providing access to their instant messaging network using an SMS interface. However, these services are not available worldwide, only users of wireless carriers that have made an agreement with AOL or Yahoo can use them. The SMS-based instant messaging services are not very convenient to use as they require the user to remember several commands and phone numbers. The recent introduction of mobile devices that allow both installation of third party software and packet switched data transfer has enabled companies to develop their own mobile client software for their proprietary protocols. For example, AOL has released an instant messaging client for mobile devices running the Symbian operating system.

Work for a non-proprietary mobile instant messaging solution commenced in 2001 when Ericsson, Nokia and Motorola teamed up to form the Wireless Village initiative (now known as IMPS), a joint project established to create universal specifications for mobile instant messaging. The first release of the specifications was made available in 2002 but it was not until in the fourth quarter of 2003 that the first mobile device with support for the technology was published.

The IP Multimedia Subsystem (IMS) defined for enabling multimedia communication services for 3G networks uses SIP for establishing multimedia sessions. The upcoming 3GPP (Third Generation Partnership Project) Release 6 specifications include instant messaging using SIMPLE, bringing SIMPLE forth as a contender to IMPS in the mobile instant messaging world as soon as IMS is widely deployed.

3.3 Differences in Comparison to Instant Messaging in Fixed Networks

Transitioning from developing Internet services targeted at fixed networks to developing mobile services is not a trivial task. The mobile environment introduces several constraints on a mobile service that do not exist in traditional, fixed environments. Not only does the technology used for establishing wireless networks place limitations on a mobile service, but also mobile terminals and the behavior of users differ significantly between fixed and mobile environments. This section presents the characteristics of mobile environments that deviate from the corresponding ones of wireline environments. Even though only aspects affecting mobile instant messaging services are considered here, most of them apply to mobile services in general.